

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

BID FOR POSITION, LLC,

Plaintiff/Counterclaim Defendant,

v.

Civil Action No. 2:07cv582 (JBF-TEM)

AOL LLC,  
GOOGLE INC.,  
MICROSOFT CORP.,  
and MIVA, INC.,

**Jury Trial Demanded**

Defendants/Counterclaim Plaintiffs.

**AOL LLC'S MOTION AND MEMORANDUM IN SUPPORT OF  
MOTION FOR LEAVE TO FILE A FIRST AMENDED ANSWER,  
AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO  
BID FOR POSITION'S COMPLAINT FOR PATENT INFRINGEMENT**

AOL LLC ("AOL"), by counsel, states as follows as its Motion for Leave to File an Amended Answer and Counterclaims and Memorandum in Support:

1. As a consequence of discovery conducted thus far in this case, AOL believes that it has grounds to amend its Answer, Affirmative Defenses and Counterclaims to add allegations of inequitable conduct on the part of the plaintiff, Bid for Position, Inc.

2. AOL's First Proposed Amended Answer, Affirmative Defenses and Counterclaims to Bid for Position's Complaint for Patent Infringement is attached as **Exhibit 1**. This pleading adds a new Fifth Affirmative Defense (paragraphs 27 through 57) and a new Third Counterclaim (paragraphs 12 through 13) directed to allegations of inequitable conduct.

3. AOL has provided a copy of the proposed First Amended Answer, Affirmative Defenses and Counterclaims to Bid for Position's Complaint for Patent Infringement to counsel for Bid for Position. Bid for Position has informed AOL that it does not oppose this Motion.

4. Granting this Motion will not delay the progress of this case, and will not result in any change in the pretrial schedule adopted by the Court.

5. In the interests of justice, and pursuant to Fed. R. Civ. P. 15 and the Local Rules of this Court, the Court should grant AOL's Motion. A Consent Order granting the relief sought is being filed contemporaneously with this Motion as **Exhibit 2**.

Dated: June 10, 2008

Respectfully submitted,

/s/

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## **CERTIFICATE OF SERVICE**

I hereby certify that on June 10, 2008, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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